

**REMARKS**

This paper is filed in response to the final official action dated December 28, 2004 (hereafter, the "official action"), and in furtherance to the Notice of Appeal mailed May 31, 2005, and received by the Patent Office on June 2, 2005. This paper is timely filed as it is accompanied by a petition for an extension of time to file in the third month and a check covering the requisite small entity fee of \$510.00.

The applicants and the undersigned attorney extend their gratitude to the examiner for the courtesies extended during the telephonic interviews of September 1, and November 2, 2005. The discussions of these interviews focused on why the amendments set forth herein overcome the outstanding final rejections.

Claims 5-10, 19-23, 34, 35, and 37-39 are pending in this application, but claim 35 has been withdrawn from consideration pursuant to the applicants provisional election of apple in this application. By the foregoing amendments, claim 5 has been amended and claims 22 and 23 have been canceled. Support for the amendment to claim 1 may be found, for example, in original claim 14. No new matter has been added.

Claims 5-10, 19-21, 34, 35, and 37-39 remain at issue.

Claims 5-7, 9, 10, 19-23, and 38-39 have been rejected under 35 U.S.C. §103(a) as assertedly being obvious over Sal'kova *et al.*, Appl. Biochem. Microbiol., 17(2):219-224 (1981) ("Sal'kova"). Claims 5, 9, 10, 19-23, 34, 37, and 39 have been rejected under 35 U.S.C. §103(a) as assertedly being obvious over Archer *et al.*, J. Anim. Sci., 33(6):1327-1331 (1971) ("Archer"). Finally, claims 5, 9, 10, 19-23, 34, 37, and 39 remain rejected under 35 U.S.C. §103 as assertedly being obvious over Archer in view of McMurry, Organic Chemistry, p.385 (1992) ("McMurry").

An explicit basis for rejecting claim 8 has not been provided.

The various bases for the claim rejections are addressed below in the order presented in the official action. Reconsideration of the application, as amended and in view of the following remarks, is solicited.

**CLAIM REJECTIONS – 35 U.S.C. §103(a)**

A *prima facie* case of obviousness must satisfy three legal requirements. *First*, there must be some suggestion or motivation, either in the references themselves, or in knowledge

generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *Second*, there must be a reasonable expectation of success. *Third*, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. See M.P.E.P. §2143. These criteria have not been satisfied with respect to pending claims 5-10, 19-21, 34, 35, and 37-39, as explained in more detail below.

Claims 5-7, 9, 10, 19-21, and 38-39

Claims 5-7, 9, 10, 19-21, and 38-39 have been rejected as assertedly being obvious over Sal'kova. The applicants respectfully traverse the rejection.

Sal'kova discloses substances capable of inhibiting and suppressing the oxidation of farnesene, which were isolated from the coating of an apple fruit by extraction with hexane. Sal'kova does not disclose or suggest any antiviral activity for the apple fruit extract. Furthermore, Sal'kova does not disclose or suggest any therapeutic use for the antioxidant substance(s). Thus, Sal'kova does not disclose or suggest the desirability of formulating the antiviral preparation with a pharmaceutically acceptable carrier to form a pharmaceutical composition possessing antiviral activity in a form selected from a tablet and a capsule, as recited by claims 5-7, 9, 10, 19-21, and 38-39.

For the foregoing reasons, the applicants respectfully submit that the obviousness rejections of claims 5-7, 9, 10, 19-21, and 38-39 over Sal'kova have been overcome and should be withdrawn.

Claims 5, 9, 10, 19-21, 34, 37, and 39

Claims 5, 9, 10, 19-21, 34, 37, and 39 have been rejected as assertedly being obvious over Archer. The applicants respectfully traverse the rejection.

Archer discloses treating whole apples with an acetone solution containing Kelthane insecticide, washing the apples with potassium hydroxide in water, ethyl alcohol, or benzene, and analyzing the residual levels of the Kelthane insecticide contaminants remaining in the apples, including whole apples, the pomace (skins and seeds), pulp, and juice. Therefore, Archer contemplates discarding the washes and analyzing the Kelthane contaminant levels remaining in the apples. Accordingly, Archer does not disclose or suggest any antiviral activity in the various washes used to remove Kelthane from any apple fruit. Furthermore, Archer does not disclose or suggest any therapeutic use for such insecticide-containing

washes, beyond killing insect pests. Thus, the applicants submit that Archer does not disclose or suggest the desirability of formulating the antiviral preparation with a pharmaceutically acceptable carrier to form a pharmaceutical composition possessing antiviral activity in a form selected from a tablet and a capsule, as recited by claims 5, 9, 10, 19-21, 34, 37, and 39.

In view of the foregoing, the applicants respectfully submit that the obviousness rejections of claims 5, 9, 10, 19-21, 34, 37, and 39 as obvious over Archer have been overcome and should be withdrawn.

Claims 5, 9, 10, 19-21, 34, 37, and 39

Claims 5, 9, 10, 19-21, 34, 37, and 39 remain rejected as assertedly being obvious over Archer in view of McMurry. The applicants respectfully traverse the rejection.

The deficiencies of Archer have been addressed above. McMurry does not remedy any of these deficiencies. For example, McMurry does not disclose or suggest an antiviral activity for substances obtained from cuticular or epicuticular layers external to an epidermis of a plant or plant part. Furthermore, McMurry does not disclose or suggest any therapeutic use for the insecticide-containing washes disclosed in Archer. Thus, the applicants submit that McMurry, whether taken alone or in combination with Archer, does not disclose or suggest the desirability of formulating an antiviral preparation with a pharmaceutically acceptable carrier to form a pharmaceutical composition possessing antiviral activity in a form selected from a tablet and a capsule, as recited by pending claims 5-10, 19-23, 34, and 36-39, as explained above.

Accordingly, the rejections of claims 5, 9, 10, 19-23, 34, 37, and 39 as being obvious over Archer in view of McMurry should be withdrawn.

**REJOINDER OF NON-ELECTED SPECIES**

The applicants respectfully request that the non-elected species of tomato be rejoined to the application in view of the above remarks.

**CONCLUSION**

It is respectfully submitted that this application is now in condition for allowance. Should the examiner wish to discuss the foregoing, or any matter of form or procedure in an effort to advance this application to allowance, she is respectfully invited to contact the undersigned attorney at the indicated telephone number.

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Respectfully submitted,

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